



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200941033

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 14 2009

Uniform Issue List: 402.08-00

SE:T:EP:RA:TI

Control Number:

Legend:

Taxpayer	=
Plan A	=
Date 1	=
Financial Institution B	=
Date 2	=
Account C	=
Financial Institution D	=
Employer E	=
Amount 1	=

Dear :

This letter is in response to a request for a letter ruling dated March 24, 2008, as supplemented by correspondence dated May 11, 2008, in which you have asked for a waiver of the 60-day rollover requirement contained in section 402(c)(3) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 1 from Plan A maintained with Financial Institution B.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer, age 58, at the time of the distribution of Amount 1 from Plan A, asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3) of the Code was due to the failure of Financial Institution D to follow Taxpayer's instructions.

Taxpayer participated in Plan A. Following her termination of employment with Employer E, Taxpayer received a notice of an eligible plan distribution. Taxpayer completed an application on line with Financial Institution D to open an IRA account to receive the rollover distribution, but the account that was established was a non-IRA account (Account C). On Date 1, Taxpayer received a check representing the distribution of her retirement benefit. The check was made out to Financial Institution D f/b/o Taxpayer and in the "For" area of the lower left hand corner of the check, Taxpayer marked "IRA Account C" evidencing her intent that the direct eligible rollover distribution be deposited into her IRA at Financial Institution D. Instead, Financial Institution D deposited the check into the non-IRA account on Date 2, a date less than 60 days after Date 1. Taxpayer received monthly statements for Account C indicating that it was a IRA rollover account.

Taxpayer did not become aware that the funds had been incorrectly deposited into a non-IRA account until she received Form 1099 for

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 402(c)(3) of the Code with respect to the distribution of Amount 1.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The facts indicate Taxpayer both intended and attempted to complete a rollover. The information presented and the documentation submitted by Taxpayer is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was due to the failure of Financial Institution D to follow her instructions.

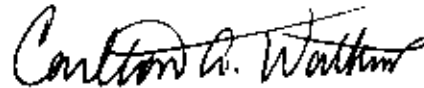
Therefore, pursuant to Code section 402(c)(3), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from Plan A. Taxpayer is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 1 into a rollover IRA. Provided all other requirements of section 402(c)(3), except the 60-day requirement, are met with respect to such contribution, Amount 1 will be considered a rollover contribution within the meaning of section 402(c)(3).

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
(), , at () .

Sincerely yours,

A handwritten signature in cursive script, reading "Carlton A. Waltham".

Manager
Employee Plans Technical Group 1

Enclosures:

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Notice of Intention to Disclose, Notice 437